

REMARKS

In accordance with 37 C.F.R. § 1.116(b), Applicants have amended claim 6 and earnestly request entry of said amendment. The amendment to claim 6 merely responds to a requirement of form expressly stated on page 2 of the Office Action mailed on November 1, 2005, wherein the Examiner noted that the phrase "is comprises" was believed to be a typographical error, which it was. In accordance with 37 C.F.R. § 1.116(b), this amendment complying with a requirement of form may be admitted. Before entry of this Amendment, claims 1-3, 6-15, 17-19 and 24-30 were pending in the application. After entry of this Amendment claims 1-3, 6-15, 17-19 and 24-30 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicant has carefully considered the Examiner's Action of April 17, 2006, and the references cited therein. The following is a brief summary of the Action. Claims 1-3, 6-15, 17-19 and 24-30 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,500,160 (hereafter Mizutani et al). Claims 6 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani et al in view of newly cited U.S. Patent Application Publication No. 2003/0199842 (hereafter Luizzi et al).

In accordance with MPEP § 706.07(d), Applicants hereby request reconsideration of the finality of the Action on the basis that the final rejection of claims 6 and 10 based on the newly cited Luizzi et al reference was premature.

In the first Office Action, which was mailed on November 1, 2005, claims 6 and 10 were rejected based on an improper reference to Sorebo et al, which was

acknowledged by the Examiner in the Final Action mailed on April 17, 2006. In response to the November initial Office Action, the Applicants had not amended claims 6 and 10 except to change the dependencies of claims 6 and 10 from claim 5 to claim 1 since the subject matter of original claim 5 was incorporated into claim 1 and claim 5 was canceled.

The last sentence of the first paragraph of page 2 of the Final Action also acknowledged that claims 6 and 10 were rejected based on a newly found reference to Luizzi et al:

However, upon further consideration, a new ground(s) rejection is made in view of a newly found prior reference.

However, the Examiner made this second Office Action in April 2006 final. Applicants respectfully request withdrawal of the finality of this second Office Action.

Per MPEP § 706.07(a) (emphasis added):

a second or any subsequent action on the merits in any application ... **will not be made final if it includes a rejection, on newly cited art,** ... of any claim not amended by Applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Applicants made no substantive change to claims 6 and 10. Thus, the new ground of rejection of claims 6 and 10 in the April 2006 Final Office Action based on Luizzi et al was not necessitated by Applicants' Amendment. The Luizzi et al reference should have been cited in the first Office Action in order to afford the Applicants the opportunity to respond on the merits to the non-final rejection of claims 6 and 10 based on Luizzi et al. Thus, the second Action is in reality only the first action on the merits as to claims 6 and 10. Applicants were not afforded the opportunity to address the

rejections of claims 6 and 10 based on the newly cited Luizzi et al reference in a non-final action. The effect of making this second action final, is to prematurely cut-off the Applicants' prosecution of their application in contravention of the requirements of MPEP § 706.07(a) quoted above.

Applicants therefore respectively request the withdrawal of the finality of the pending April 2006 Office Action.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-3, 6-15, 17-19 and 24-30 under 35 U.S.C. 102(e) as being anticipated by Mizutani et al.

Each of independent claims 1, 17 and 25 calls for an individually wrapped absorbent article package to include a wrapper material folded into a pouch. A seal is provided in the wrapper material such that a user gains access to the absorbent article by opening the seal. The wrapper material includes a nonwoven material in at least a region along the seal such that the seal is formed completely of the nonwoven material.

Each of claims 1, 17 and 25 further calls for this seal to have a seal strength of between about 20 grams-force and about 60 grams-force. Applicants respectfully submit that claims 1, 17 and 25 are not anticipated by Mizutani et al as discussed below.

Mizutani et al describes a particular peel strength between the release sheets 21, 22 and the packaging material 10. The Examiner concludes that this peel strength would also exist along the sealed portions 25. Lines 4 – 10 on page 3 of the Final Office Action state (emphasis added):

Mizutani teaches that the peel strength between the adhesive disposed on packaging member 10 and release

sheets 21 and 22 is between 490 and 3920 mN/cm^2 (Col. 8, lines 62-65) or between 4.08 and 39.2 mgf, and a decibel level upon unsealing of portions 25 of 55 db. (Col. 12, line 1). Examiner is concluding that the peel strength between lateral side edges in portions 25 upon unsealing is at least as great as the peel strength between said edges and said release sheets owing to the absence of adhesive on release sheets 21 and 22.

Applicants respectfully disagree with this conclusion. The peel strengths cited in Mitzutani et al are a function of the type of material used for the release sheets 21, 22, as well as the particular adhesive. On the other hand, the sealed portions 25 are formed by fusing the laminate packaging member 10 using a heat roll, as described at column 10, lines 13 through 17 of the Mitzutani et al reference. These heat rolled sealed portions 25 in Mitzutani et al are distinctly different from the release sheet adhesive seals in Mitzutani et al. There are no values indicated whatsoever for the strength of the sealed portions 25 in Mitzutani et al, and the peel strengths of the release sheets 21 and 22 in Mitzutani et al do not correlate to the strength of the sealed portions 25.

Moreover, it appears that Mitzutani et al speaks in terms of mN/cm^2 , which equals $\text{N times } 10^{-3}/\text{cm}^2$, which is a pressure measurement of force (Newtons) per unit of area (square centimeters). However, Applicants' claims speak in terms grams-force, which is the force felt by a gram of mass in the earth's gravitational field and is a force measurement, not a pressure measurement. Indeed, 20 grams-force equals 20 times 980.7 dynes, which equals 20 times 980.7 times 10^{-5} Newtons (**N**), which equals 19,614 times 10^{-5} **N**, which equals 0.19614 **N**. Thus, Mitzutani et al's range of 490 to about 3920 mN/cm^2 and Applicants' range of about 0.19614 to 0.58842 **N** are not comparable.

Thus, the peel strength values set forth in each of independent claims 1, 17 and 25 are not disclosed by Mitzutani et al. Accordingly, Applicants respectfully submit that independent claims 1, 17 and 25 are allowable over Mitzutani et al under 35 U.S.C. 102(e), and that claims 2, 3, 7-9, 11-15, 18, 19, 24 and 26 through 30 depending therefrom, are also allowable.

For the reasons explained below, applicants respectfully traverse the rejection of claims 6 and 10 under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al in view of Luizzi et al.

Claim 6 requires the film material sheet of the wrapper to comprise “a pattern of holes defined therethrough, said nonwoven material exposed by said holes”. In the embodiment of Fig. 5, the film material 50 of the wrapper includes a pattern of holes or passages 56 defined through the film material 50. Thus, the nonwoven material of the wrapper is exposed through these holes or passages 56 when the wrapper material is folded into the pouch configuration. Claim 10 requires the film material sheet of the wrapper to be vapor permeable.

Lines 8 – 13 on page 5 of the Final Office Action states (emphasis added):

Luizzi teaches an absorbent article having a tape tab at one longitudinal end for retaining a soiled article in a folded configuration. The article is comprised of a backsheet of nonwoven material and a cover sheet comprised of a porous (i.e. vapor permeable) or nonporous nonwoven film. ('842, ¶0032) Therefore Luizzi teaches that a porous film may be substituted for a regular nonwoven, and a porous film by its nature possesses a pattern of holes.

Applicants respectfully disagree with this conclusion. First, Luizzi et al fails to correct the deficiencies noted above in Mitzutani et al, and thus claims 6 and 10 are patentable under 35 U.S.C. 103(a) over Mitzutani et al in view of Luizzi et al for this first reason.

Moreover, Luizzi et al only discloses an absorbent article 10. Luizzi et al fails to disclose or suggest that the article 10 should be provided in a pouch formed of a wrapper that comprises a nonwoven material lined with a film that is either provided with a pattern of holes that exposes the nonwoven material (as in Applicants' claim 6) or that is vapor permeable (as in Applicants' claim 10). Per Luizzi et al ¶0031, the Luizzi et al porous film referenced in the Final Action is the topsheet or cover 30 of the Luizzi et al absorbent article 10, not any sort of film forming part of a wrapper for the absorbent article 10.

Accordingly, Applicants respectfully submit that claims 6 and 10 are patentable under 35 U.S.C. 103(a) over Mitzutani et al in view of Luizzi et al for this additional reason.

Applicants respectfully request reconsideration and reexamination of claims 1-3, 6-15, 17-19 and 24-30, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

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